

## **NIH Policy Manual**

### **2300-810-2 POLICY FOR NIH EMPLOYEES REQUESTING LEAVE BUY BACK IN CONNECTION WITH A WORKERS' COMPENSATION CLAIM**

**Issuing Office: OD/OHR/DESB 496-2404**

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1. **Explanation of Material Transmitted:** This issuance transmits the NIH policy for employees who wish to buy back their leave used in connection with a workers' compensation claim.

2. **Filing Instructions:**

Remove: None

Insert: NIH Manual Issuance 2300-810-2, dated 09/17/01

#### **PLEASE NOTE:**

For information on the content of this chapter, contact the issuing office listed above.

For information on the NIH Manual System, contact the Division of Management Support, Office of Management Assessment, (OMA), on 496-2832.

For on-line information, use <http://www3.od.nih.gov/oma/manualchapters/>.

**POLICY FOR NIH EMPLOYEES REQUESTING LEAVE BUY BACK IN  
CONNECTION WITH A WORKERS' COMPENSATION CLAIM**

**A. Purpose and Scope**

1. When an employee uses sick or annual leave due to an on-the-job injury or illness, there is a method by which the leave can be recredited to the employee. It is the policy of the NIH, if the claim is approved and medical evidence shows the employee was unable to work because of the injury during the period claimed, an employee may request "leave buy back" by submitting a Claim for Compensation (CA-7) form, to the Office of Workers' Compensation Programs (OWCP), U. S. Department of Labor (DOL) through the Occupational Medical Service (OMS) Workers' Compensation Office, NIH.
2. Two additional forms, a Time Analysis (CA-7a) and a Worksheet/Certification and Election (CA-7b), are to be filed with the CA-7 for leave buy back claims. The CA-7a is used when leave dates are intermittent or when more than one continuous period of leave is claimed. The CA-7b fully explains the process and provides the employee an estimate of the Federal Employees' Compensation Act (FECA) entitlement. It enables the NIH to advise the employee of the amount required by DHHS to reinstate the leave in question and requires the employee to agree to the process in advance of submission of the form.
3. Unless there is a significant variance between the NIH estimate of FECA entitlement and the actual entitlement determined by the OWCP, the leave buy back claim can be processed by the OWCP immediately upon receipt of the completed claim forms, providing the medical evidence supports injury related time loss for each date claimed. If there is a significant variance (where the estimated entitlement is more than 10% above the actual entitlement) the OWCP claims examiner will advise the claimant of this and require return of a signed election before the claim is paid.
4. If all or part of the claim is payable, the OWCP claims examiner will certify payment of their portion of the claim directly to the DHHS payroll office. The employee will be notified by the DHHS payroll office of his/her share which will be the difference between the leave pay based on 100 percent of the employee's usual wage rate, and the compensation payment which is paid at two-thirds or three-fourths of the wage rate. The employee shall also pay his/her share directly to the DHHS payroll office.

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5. Implementation of this issuance must be carried out in accordance with applicable laws, regulations, and bargaining agreements.

**B. Policy**

1. When an employee who sustains a job-related injury or illness uses leave during a period of disability, and a claim for compensation is approved by the OWCP, the employee may buy back the used leave and have it reccredited to his/her account.
2. Requests for leave buy back must be submitted within one year of the date the employee used the leave or the date the claim was accepted by OWCP, whichever is later.
3. These procedures apply to the buy back of sick and annual leave only. There is no statutory authority for the buy back of compensatory time or credit hours used in lieu of taking sick and/or annual leave and such requests will not be processed.
4. The employee may not repurchase leave taken during the 45-day continuation of pay (COP) period unless the employee was not entitled to receive continuation of pay. For example, there is no entitlement to COP if the employee filed a form CA-2, "Notice of Occupational Disease and Claim for Compensation," for an occupational illness or if a form CA-1, "Federal Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation," was not filed with the supervisor within 30 days of the date of traumatic injury. **NOTE:** Both the CA-1 and CA-2 forms are only available from the OMS Workers' Compensation Office.
5. In the case of a traumatic injury, the first three calendar days of leave without pay (LWOP) status following the last day of the 45-day COP period is a waiting period. Wage-loss compensation is payable on the day following the end of the three-day waiting period. However, if the employee is out of work and on LWOP more than 14 calendar days, no waiting period is required. Then compensation is payable from the first day of LWOP. This rule also applies to traumatic injury situations where there is no COP entitlement. In the case of an occupational disease, there is no entitlement to COP. Therefore, compensation is payable after the first three days the employee is off work and in a non-pay status due to the illness. If the employee is out of work and in a non-pay status more than 14 calendar days, there is no waiting period, and the

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compensation is payable from the first day of LWOP.

6. If the employee has not previously filed a CA-7, he/she will be required to do so before the leave buy back can be processed. This form will be provided to the employee, if necessary, by the OMS Workers' Compensation Office. NOTE: The supervisor does NOT complete the reverse side of the form.
7. Compensation for the purpose of leave buy back will be paid by the OWCP to the DHHS at 66 2/3 percent of the employee's gross pay if the employee has no dependents or at 75 percent if the employee has one or more dependents. The OWCP formula for determining the amount of compensation entitlement is the employee's weekly pay rate, multiplied by the compensation rate, multiplied by the number of hours claimed, divided by the number of hours worked per week.
8. Since the amount of money paid the employee for leave taken is based on 100 percent of the employee's gross pay, the employee will be required to refund to DHHS the difference between the compensation entitlement paid by the OWCP and the total amount due for the period of leave paid.

**C. Steps to Process the Leave Buy Back**

1. The employee will complete a CA-7 and a CA-7a obtained from the OMS Workers' Compensation Office. The official responsible for certifying the employee's time and attendance (e.g., immediate supervisor) will sign in block 7 of the CA-7a.
2. The OMS Workers' Compensation Specialist will complete Section I, Agency Estimate of FECA Entitlement, Items A-G (line numbers 1-10) of the CA-7b, using information from the employee's personnel records and the CA-7a and forward the package to the Human Resource Program Support Division (HRPSD).
3. The HRPSD Workers' Compensation Specialist will complete Section II, Agency Certification, Item I (line number 12) of the CA-7b and will FAX the package (CA-7a and CA-7b) to the DHHS payroll office. The HRPSD Workers' Compensation Specialist will call the payroll office to alert them the FAX is coming.

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4. The payroll office will determine the total amount of money due DHHS to buy back the leave and complete Section II, Agency Certification, Item H (line number 11) of the CA-7b. Payroll will then FAX the CA-7b back to the HRPSD Workers' Compensation Specialist.
5. The HRPSD Workers' Compensation Specialist will complete and certify the remainder of Section II, Agency Certification, of the original CA-7b and send the form, with the CA-7a, back to the OMS Workers' Compensation Specialist.
6. The OMS Workers' Compensation Specialist will obtain the employee's election and signature in Section III, Employee Claim, Item K or L, of the CA-7b. If the employee elects not to buy back the leave, the OMS Workers' Compensation Specialist will retain the forms in the employee's workers' compensation file. If the employee elects to buy back the leave, the OMS Workers' Compensation Specialist will forward the CA-7a and CA-7b to the HRPSD Workers' Compensation Specialist, who, in turn, will send the CA-7, CA-7a and CA7b to OWCP, DOL for processing. **NOTE: The employee will have thirty (30) days from the date he/she is notified by the OMS Workers' Compensation Specialist to make an election and sign the CA-7b. After that time, the DHHS Payroll Office will be notified that the employee does not wish to buy back the leave and nothing further will be processed.**
7. If the request for leave buy back is approved, the OWCP, DOL, will notify the employee and the NIH and forward a check directly to the DHHS payroll office for the amount of compensation entitlement.
8. Upon receipt of notification of the approved leave buy back, the HRPSD Workers' Compensation Specialist will notify the employee's timekeeper that the employee's time and attendance records must be amended for all pay periods concerned, changing the employee's record from "leave with pay" to "leave without pay." The HRPSD Workers' Compensation Specialist will forward the complete, approved package (CA-7a, CA-7b signed by the employee, and amended time records) to the DHHS payroll office. **NOTE: Time records may be amended using the NIH Integrated Time and Attendance System (ITAS); however, the amendments should NOT be transmitted electronically. Rather, a copy of the screen image should be printed and forwarded in hard copy with the package to payroll.**

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9. Payroll will audit the employee's pay/leave records and notify the employee of the amount of money due from him/her to complete the transaction. **NOTE: The amount of money due must be paid in one lump sum directly to the DHHS Payroll Office. Installment and/or payroll deduction options are not available.**
10. Once the total amount of money due to buy back the leave is received by the payroll office, the leave will be reinstated to the employee's account.

**D. Advice to Employees**

1. When counseling the employee about leave buy back, the OMS Workers' Compensation Specialist will ensure the employee understands the implications of doing so. Specifically, he/she will be advised regarding leave forfeiture and restoration and tax implications.
  - a. Leave that is bought back is recredited to the year in which it was actually used. If the employee buys back annual leave that results in an end-of-leave-year balance in excess of the maximum ceiling (usually 240 hours), the excess leave will be forfeited and may not be restored. If, however, the employee separates prior to the end of the leave year, there is no limitation on the amount of annual leave that may be bought back. Leave forfeiture and restoration rules will be fully explained to employees to ensure they are properly informed.
  - b. If the leave buy back occurs during the same year the leave was taken, the employee's W-2 form will be adjusted to reflect the amended pay status. However, if it occurs during a subsequent year, the employee will be advised that wages paid in a prior year remain taxable to the employee for that year. This is because the employee received and had use of these funds during that year. The employee is not entitled to file an amended return (Form 1040X) to recover the income tax on these wages; however, he/she is entitled to a deduction (or a credit in some cases) on his/her Form 1040 for the year of repayment. Employees will be advised to consult a tax advisor or the Internal Revenue Service for information regarding tax implications.

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2. Employees will also be advised that for every 80 hours of leave changed to LWOP for the purpose of buying it back, both his/her annual and sick leave balance will be reduced by the amount of leave normally earned in a pay period. For example, an employee who earns eight hours of annual leave and four hours of sick leave per pay period requests to buy back 160 hours of annual leave and 80 hours of sick leave. The annual and sick leave used for three pay periods is changed to LWOP. Since leave does not accrue during any pay period in which 80 of LWOP is reached, the 24 hours of annual leave and 12 hours of sick leave which had accrued during the three pay periods must be deducted. When the process is finalized, the employee will be reccredited with 136 hours of annual leave (160 hours minus 24 hours) and 68 hours of sick leave (80 hours minus 12 hours).
- E. **Management Controls:** The purpose of this manual issuance is to assure that all work and related activities are conducted in full accord with statutory, regulatory and policy requirements.
1. The office responsible for reviewing management controls relative to this chapter is OD/OHRM/HRPSD (issuing office).  
  
Through this issuance, the Office of Human Resource Management, Office of the Director, NIH is accountable for the method used to ensure that management controls are implemented and working.
  2. The frequency of review will be every three years.
  3. The method of review will be to conduct surveys among the Institutes and Centers (ICs).
  4. The review report is sent to the Director of Human Resources, NIH.
- F. **Records Retention and Disposal:** All records (e-mail and non-e-mail) pertaining to this chapter must be retained and disposed of under the authority of NIH Manual 1743, "Keeping and Destroying Records, Appendix 1, NIH Records Control Schedule," Item 1900-D-3, Time and Attendance Report Files.

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1. NIH e-mail messages (messages, including attachments, that are created on NIH computer systems or transmitted over NIH networks) that are evidence of the activities of the agency or have informational value are considered Federal records. **These records must be maintained in accordance with current NIH Records Management guidelines. Contact your IC Records Officer for additional information.**
2. All e-mail messages are considered Government property, and, if requested for a legitimate Government purpose, must be provided to the requester. Employees' supervisors, NIH staff conducting official reviews or investigations, and the Office of Inspector General may request access to or copies of the e-mail messages. E-mail messages must also be provided to members of Congress or congressional committees if requested and are subject to Freedom of Information Act requests. Since most e-mail systems have back-up files that are sometimes retained for significant periods of time, e-mail messages and attachments may be retrievable from a back-up file after they have been deleted from an individual's computer. The back-up files are subject to the same request as the original messages.

**G. References**

1. FECA Bulletin No 96-11, Compensation - Revised Leave Buy Back Procedures, dated July 9, 1996
2. 5 U.S. Code 6301
3. 5 CFR 6301
4. DHHS Payroll Reference Guide